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October 4, 2005

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: April 6, 2005

Case Number: TSO-0223

This decision concerns the eligibility of xxxxxxxx xxxxxxxxxxxx(hereinafter referred to as "the Individual") to obtain an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ This decision considers whether, on the basis of the evidence in this proceeding, the Individual's access authorization should be restored. For the reasons stated below, I find that the Individual's access authorization should not be restored.

I. BACKGROUND

The present case concerns an Individual who has been diagnosed with Alcohol Dependence. DOE Exhibit 9 at 9. The events leading to this proceeding began on the morning of March 25, 2004, when a co-worker reported that the Individual appeared to be inebriated at work. The Individual was then referred to her employer's medical department. The medical department apparently attempted to administer a breathalyzer test to the Individual but was unable to obtain a valid reading. Statement of Charges at 1. The medical department then obtained the Individual's consent to perform a blood test in order to determine her Blood Alcohol Level (BAL). The blood test indicated that the Individual's BAL was .255. The Individual was then driven home.² The next morning, the Individual's employer asked her to return to the medical department to undergo a breathalyzer test. The Individual complied with this request. That test indicated that she had a BAL of .129 on the morning of March 26, 2004. The Local Security Organization (LSO) had previously received information indicating that the Individual had been arrested for Driving While Intoxicated (DWI) on December 17, 1988. At the time of her DWI arrest, the Individual's BAL was .23. A personnel security interview (PSI) of the Individual was

¹An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as an access authorization or a security clearance.

²The Individual had apparently driven herself to work that morning.

conducted on July 27, 2004. The Individual was then asked to submit to an examination by a DOE Psychiatrist. On September 30, 2004, a DOE Psychiatrist conducted a forensic psychiatric examination of the Individual. In addition to conducting this examination, the DOE Psychiatrist administered a series of psychological tests to the Individual. The DOE Psychiatrist also reviewed selected portions of the Individual's security case file including the transcript of the PSI. On October 3, 2004, the DOE Psychiatrist issued a report in which he stated that the Individual met the criteria for Alcohol Dependence, as set forth in Diagnostic and Statistical Manual of Mental Disorders IV-TR (DSM-IV-TR). DOE Exhibit 9 at 9. The DOE Psychiatrist, noting that the Individual was still drinking and continuing to deny that she had a drinking problem, further opined that the Individual was not sufficiently rehabilitated or reformed to resolve the security concerns raised by her alcohol dependence.

An administrative review proceeding was initiated. *See* 10 C.F.R. § 710.9. The LSO then issued a letter notifying the Individual that it possessed information that raised a substantial doubt concerning her eligibility for access authorization (the Notification Letter). The Notification letter alleges that the Individual has "been, or is, a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j) (Criterion J). The Notification Letter also alleges that the Individual has: "an illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h) (Criterion H).

The Individual filed a request for a hearing in which she made a general denial of the allegations contained in the Notification Letter. This request was forwarded to the Director of the Office of Hearings and Appeals (OHA) who appointed me as Hearing Officer.

A Hearing was conducted on August 2, 2005, in order to provide the parties with an opportunity to submit testimony, physical evidence and oral argument. At the Hearing, the LSO presented one witness: the DOE Psychiatrist. The Individual presented two witnesses: a co-worker and her union steward. The Individual also testified on her own behalf.

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the

motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

III. FINDINGS OF LAW AND FACT

After conducting a forensic psychiatric examination, administering a series of six psychological evaluation tests and reviewing selected portions of the Individual's security file, the DOE Psychiatrist diagnosed her with "Alcohol Dependence, possibly in early, partial, remission."³ DOE Exhibit 9 at 8-9. The DOE Psychiatrist testified that the Individual met the criteria for Alcohol Dependence, set forth in the American Psychiatric Association's Diagnostic and Statistical Manual, Fourth Edition-Text Revision (DSM-IV TR). Transcript of Hearing (Tr.) at 19. The DSM-IV TR defines Alcohol Dependence as

A maladaptive pattern of alcohol use leading to clinically significant impairment or distress, as manifested by three (or more) of the following, occurring at any time in the same 12 month period:

- (1) tolerance, as defined by either of the following:
 - (a) a need for markedly increased amounts of [alcohol] to achieve intoxication or desired effect
 - (b) markedly diminished effect with continued use of the same amount of [alcohol]
- (2) withdrawal, as manifested by either of the following:
 - (a) the characteristic withdrawal syndrome for [alcohol]. ..
 - (b) [alcohol] is taken to relieve or avoid withdrawal symptoms
- (3) [alcohol] is often taken in larger amounts or over a longer period than was originally intended
- (4) there is a persistent desire or unsuccessful efforts to cut down or control [alcohol] use
- (5) a great deal of time is spent in activities necessary to obtain [alcohol] (e.g., visiting multiple doctors or driving long distances, use the substance ..., or recover from its effects
- (6) important social, occupational, or recreational activities are given up or reduced because of [alcohol] use
- (7) the [alcohol] use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by [alcohol] . . .

DSM-IV TR at 197, 213. The DOE Psychiatrist testified the Individual exhibited five of the seven

³ The six psychological instruments applied to the Individual were (1) the Zung Depression Scale, (2) the Hamilton Anxiety Rating Scale, (3) the Yale-Brown Obsessive Compulsive Screener, (4) the Mood Disorder Questionnaire (5) the Mini-Patient Health Survey (MPHS), and (6) the Personality Assessment Inventory. DOE Exhibit 9 at 7.

criteria: specifically criteria 1, 3, 4, 6, and 7. Tr. at 19-22. The DOE Psychologist's findings that the Individual met these criteria are based upon a number of factors. The DOE Psychiatrist relied upon the Individual's ability to operate a motor vehicle with a BAL reading of .255 as evidence of tolerance (DSM-IV TR Criterion 1). Tr. at 19-20. The DOE Psychiatrist's finding that the Individual has often used alcohol in larger amounts or over a longer period of time than originally intended was based upon the Individual's response to a question in the MPHS (DSM-IV TR Criterion 3). Tr. at 20. The DOE Psychiatrist's findings that the Individual has a persistent desire or unsuccessful efforts to cut down or control her alcohol use (DSM-IV TR Criterion 4) were based upon her statements to the DOE Psychiatrist indicating that her friends had previously expressed concern about her alcohol use. Tr. at 20-21. The DOE Psychiatrist's finding that the Individual had given up or reduced important social, occupational or recreational activities because of her alcohol use (DSM-IV TR Criterion 6) was based upon the Individual's response to a question in the MPHS. Tr. at 22. The DOE Psychiatrist's finding that the Individual's alcohol use has continued despite her knowledge of having a recurrent physical or psychological problem that is likely to have been caused or exacerbated by such use is based largely upon that information in the record showing that the Individual returned to work under the influence of alcohol the day after being sent home from work because of her alcohol intoxication. Tr. at 22.

The DOE Psychiatrist's opinion that the Individual is Alcohol Dependent provided the LSO with an appropriate basis for invoking Criteria H and J. A finding of derogatory information does not, however, end the evaluation of evidence concerning the individual's eligibility for access authorization. *See Personnel Security Hearing (Case No. VSO-0244)*, 27 DOE ¶ 82,797 (affirmed by OSA, 1999); *Personnel Security Hearing (Case No. VSO-0154)*, 26 DOE ¶ 82,794 (1997), *aff'd*, *Personnel Security Review (Case No. VSA-0154)*, 27 DOE ¶ 83,008 (affirmed by OSA, 1998). In the end, like all Hearing Officers, I must exercise my common sense judgment in deciding whether the Individual's access authorization should be restored after considering the applicable factors prescribed in 10 C.F.R. § 710.7(c). Therefore, I must determine whether the Individual has submitted sufficient evidence of rehabilitation or reformation to resolve the security concerns raised by her alcohol dependence. After considering all of the evidence in the record, I find that she has not.

In his Report, the DOE Psychiatrist contended that, in order to establish *rehabilitation* from her alcohol dependence, the Individual must:

Produce documented evidence of attendance at Alcoholics Anonymous for a minimum of 150 hours with a sponsor, at least three times a week, for a minimum of one year and be completely abstinent from alcohol for minimum of 1 year after completing this program; i.e. two years of abstinence; **or**,

Satisfactorily complete a minimum of 50 hours of a professionally led, alcohol abuse treatment program, for a minimum of six-months, including what is called "aftercare" and be completely abstinent from alcohol for a minimum of one and one-half years following the completion of this program; i.e. two years abstinence.

Psychiatrist's Report at 10-11 (emphasis in the original). In his Report, the DOE Psychiatrist further

contended that, in order to establish *reformation* from his substance related disorders, the Individual must either: “(1) [Complete one of the two] rehabilitation programs listed above, then two years of absolute [sobriety], or (2) [Complete] three years of absolute sobriety. . .” *Id.* The Individual has not met any of the criteria for rehabilitation or reformation.

The Individual now admits that her drinking has been problematic in the past. Tr. at 51, 53, 76, and 78.⁴ The Individual apparently does not, however, acknowledge the diagnosis of alcohol dependence, or the severity of her illness. *See* DOE Exhibit 9 at 9. At the Hearing the Individual repeatedly testified that she believes that she does not currently have a problem with alcohol. Tr. at 69-70, 74, 76.

The Individual claims to have taken several actions to address her drinking, including attending AA, Tr. at 58-61, obtaining an AA sponsor, PSI at 103, seeing a clinical psychologist (Clinical Psychologist), and reducing her drinking, PSI at 104.⁵ The Individual further notes that she has been subject to random testing for alcohol use at her work place and that each of these random tests has been negative. Tr. at 65-66, 76. At the Hearing, she indicated that she had decided to quit using alcohol. Tr. at 55-56, 67-69, 73, 77.

However, the Individual discontinued participation in AA after approximately four months and no longer has a sponsor. Tr. at 70; DOE Exhibit 9 at 3, 6. She saw the Clinical Psychologist only three or four times. Tr. at 53; DOE Exhibit 9 at 3. As of the date of the Hearing, the Individual was not receiving any treatment for alcoholism or attending AA. Tr. at 70. Most importantly, the Individual had consumed alcohol within a month of the hearing. Tr. at 54, 67.

The record conclusively establishes that the Individual is alcohol dependent and is without any significant evidence of reformation or rehabilitation. The Individual has therefore failed to resolve the security concerns raised by the Individual's alcohol dependence.

IV. CONCLUSION

For the reasons set forth above, I conclude that the Individual has not resolved the security concerns raised under Criteria J and H. Therefore, the Individual has not demonstrated that restoring her security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, it is my opinion that the Individual's access authorization should not

⁴ During the July 27, 2004 PSI, the Individual repeatedly denied that she had any problems with alcohol. Transcript of PSI at 58-59, 88-89, and 103. During her psychiatric examination, she continued to assert that she did not have a problem with alcohol. DOE Exhibit 9 at 6.

⁵ The Individual has repeatedly asserted that the Clinical Psychologist told her she didn't have a problem with alcohol. However, the Individual did not offer the Clinical Psychologist's testimonial or written confirmation of this assertion. The Individual did submit medical records obtained from the Clinical Psychologist. The medical records did not substantiate the Individual's claim that the Clinical Psychologist had informed her she did not have a problem with alcohol.

be granted at this time. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: October 4, 2005